arms control. Beginning 10 July 1986, as many as six DOE Division of Classification staff members sat around his dining room table for a few days, selecting a large number of documents which they then took with them back to DOE headquarters in Germantown, Maryland. In due course, most of these were returned with deletions, except that a number of documents that required review by U.S. government agencies other than DOE, or by the United Kingdom, were not returned until August 1990.

But there was more. In October 1986 I was informed that the DOE classification people wanted to perform another review of copy #2, the one in my home, in order to ''sanitize'' it, a euphemism for a further classification review of the already reviewed journal. I was informed that the sanitization procedure would take place at Livermore, that it would last 3 to 6 weeks, and that it would involve from 8 to 12 people. Copy #2 was duly picked up at my home and delivered to Livermore on 22 October 1986. When the sanitized version was returned almost 2 months later, it had been subjected, including the prior review, to about 1000 classification actions. These included the entire removal of about 500 documents for review by other U.S. agencies or, in a few cases, by the British. Over my objection, an unsightly declassification stamp was placed on every surviving document.

Finally, the DOE sent to the Lawrence Berkeley Laboratory a team of about 12 people to begin a ''catalog,'' that is, an itemized listing, of all the personal correspondence I had brought from the AEC and of the contents of my journal and files for the prior 25 years of my working life before I became AEC chairman. Beginning on 29 April 1987, the team spent about 2 weeks at this task. In March 1988 another DOE group visited me for about a month in order to complete the catalog. The motives of DOE in undertaking this task were not clear. They may well have intended to be helpful to me. Before they finished, however, the two groups uncovered some additional ''secret'' material.

My grammar and high school and university student papers stored in another part of my home, overlooked by the DOE classification teams, have so far escaped a security review.

My journal was finally reproduced in January 1989 (2) in 25 volumes, averaging about 700 pages each, many of them defaced with classification markings and containing large gaps where deletions had been made. In June 1992 a 26th volume was added. It contained a batch of documents initially taken away for classification review and subsequently returned to me, with many deletions, after the production of the other 25 volumes in January 1989. (Many other removed documents have still not been returned.). All 26 volumes are now publicly available in the expurgated form in the Manuscript Division of the Library of Congress.

This, then, is a summary narrative of the rocky voyage of my daily journal amid the shoals of multiple classification reviews. Those interested in a more detailed account can find it among the daily entries in my journal for the period after I left the AEC. This is available in the Manuscript Division of the Library of Congress, and has fortunately not yet been subjected to classification review.

What is to be concluded about this sorry tale? One conclusion I have reached is that the security classification of information became in the 1980s an arbitrary, capricious, and frivolous process, almost devoid of objective criteria. Witness the fact that the successive reviews of my journal at different places and by different people resulted in widely varying results in the types and number of deletions made or documents removed. Furthermore, some of the individual classification actions seem utterly ludicrous. These include my description of one of the occasions when I accompanied my children on a ''trick or treat'' outing on a Halloween evening, and my account of my wife Helen's visit to the Lake Country in England. One would have to ask how publication of these bits of family lore would adversely affect the security of the United States. A particular specialty of the reviewers was to delete from the journal many items that were already part of the public record. These included material published in my 1981 book (with Benjamin S. Loeb), ''Kennedy, Khrushchev, and the Test Ban'' (3). Another example concerned the code names of previously conducted nuclear weapons tests. These were deleted almost everywhere they appeared regardless of the fact that in January 1985 the DOE had issued a report listing, with their code names, all ''Announced United States Nuclear Tests, July 1945 through December 1984'' (4). A third category of deletions concerned entries that might have been politically or personally embarrassing to individuals or groups but whose publication would not in any way threaten U.S. national security. In fact, I would go so far as to contend that hardly any of the approximately 1,000 classification actions (removals of documents or deletions within document) taken so randomly by the various reviewers could be justified on legitimate national security grounds.

Consistent with this belief, I have requested repeatedly throughout this difficult time that a copy of my journal as originally prepared, that is, before all the classification reviews, be kept on file somewhere. I had in mind that there might come a day when a more rational approach to secrecy might prevail and permit wider access, especially to historians, of the complete record. There are indications that, especially with the end of the Cold War, such an era may be at hand or rapidly approaching. While the DOE has made no commitment to honor my request. I am informed that DOE's History Division does maintain an unexpurgated copy for its own use. Perforce, it is handled as a classified document.

I would like to emphasize that I received fine and sympathetic treatment from many in the DOE who made it clear to me that they were not in agreement with the treatment accorded me and my journal during the process recounted above. In fact, more than one person in DOE has told me informally that evidence does indeed exist verifying that my journal did indeed receive a clearance before my departure from the AEC in 1971.

The problems posed by classification and declassification of sensitive materials are major ones and require wise people who must make sophisticated decisions. It requires a range of individuals who, on the one hand, have vision in regard to the whole range of scientific and national security policies, and on the other hand, have the time to read pages of detailed descriptions in a wide range of areas. Sometimes this complex goal gets derailed by those who see the trees and not the forest. Those in charge of classification should have an appreciation of the need, in our open society, to publish all scientific and political information that has no adverse national security effect (realistically defined).

Although I have in general received sympathetic treatment, I cannot help but note that this treatment has produced quite different conclusions at different periods in the country's history. Actually, the AEC, from its beginning in 1947, initiated and executed an excellent progressive program of declassification with an enlightened regard for the need of such information in an open, increasingly scientific society. By the 1960s, this program was serving our country well. Unfortunately, during the 1980s the program had retrogressed to the extent of reversing many earlier declassification actions. Fortunately, the present situation is very much improved so we can look forward to the future with considerable optimism.

REFERENCES

1. G.T. Seaborg and B.S. Loeb. Stemming the Tide: Arms Control in the Johnson Years (Free Press, New York, 1987).

2. G.T. Seaborg. Lawr. Bork, Lab. Tech. Inf. Dep. Publ. PUB–625 (1989).

3. G.T. Seaborg and B.S. Loeb. Kennedy, Khrushchev, and the Test Ban (Univ. of California Press, Berkeley, 1981).

4. U.S. Dep. Energy Rep. NVO–209 (revision 5) (1985).

ADDITIONAL COSPONSORS

S. 412

At the request of Mr. LAUTENBERG, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 412, a bill to provide for a national standard to prohibit the operation of motor vehicles by intoxicated individuals.

S. 648

At the request of Mr. GORTON, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 648, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

S. 1042

At the request of Mr. GRAHAM, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1042, a bill to require country of origin labeling of perishable agricultural commodities imported into the United States and to establish penalties for violations of the labeling requirements.

S. 1114

At the request of Mr. JEFFORDS, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 1114, a bill to impose a limitation on lifetime aggregate limits imposed by health plans.

S. 1133

At the request of Mr. BURNS, his name was added as a cosponsor of S. 1133, a bill to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses and to increase the maximum annual amount of contributions to such accounts.

SENATE CONCURRENT RESOLUTION 52

At the request of Mr. HOLLINGS, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of Senate Concurrent Resolution 52, a concurrent resolution relating to maintaining the current standard behind the ''Made in USA'' label, in order to protect consumers and jobs in the United States.

SENATE RESOLUTION 128—RELATIVE TO THE VACANCIES ACT

Mr. THURMOND (for himself, Mr. HATCH, Mr. GRASSLEY, Mr. KYL, Mr. SESSIONS, and Mr. DEWINE) submitted the following resolution; which was referred to the Committee on Governmental Affairs:

S. RES. 128

Whereas Congress enacted the Act entitled ''An Act to authorize the temporary supplying of vacancies in the executive departments'', approved July 23, 1868 (commonly referred to as the ''Vacancies Act''), to—

(1) preclude the extended filling of a vacancy in an office of an executive or military department subject to Senate confirmation, without the submission of a Presidential nomination;

(2) provide an exclusive means to temporarily fill such a vacancy; and

(3) clarify the role of the Senate in the exercise of the Senate's constitutional advice and consent powers in the Presidential appointment of certain officers;

Whereas subchapter III of chapter 33 of title 5, United States Code, includes a codification of the Vacancies Act, and (pursuant to an amendment on August 17, 1988, to section 3345 of such title) specifically applies such vacancy provisions to all Executive agencies, including the Department of Justice;

Whereas the legislative history accompanying the 1988 amendment makes clear in the controlling committee report that the general administrative authorizing provisions for the Executive agencies, which include sections 509 and 510 of title 28, United States Code, regarding the Department of Justice, do not supersede the specific vacancy provisions in title 5, United States Code;

Whereas there are statutory provisions of general administrative authority applicable to every Executive department and other Executive agencies that are similar to sections 509 and 510 of title 28, United States Code, relating to the Department of Justice;

Whereas despite the clear intent of Congress, the Attorney General of the United States has continued to interpret the provisions granting general administrative authority to the Attorney General under sections 509 and 510 of title 28, United States Code, to supersede the specific vacancy provisions in title 5, United States Code; and

Whereas the interpretation of the Attorney General would—

(1) virtually nullify the vacancy provisions under subchapter III of chapter 33 of title 5, United States Code;

(2) circumvent the clear intention of Congress to preclude the extended filling of certain vacancies and provide for the temporary filling of such vacancies; and

(3) subvert the constitutional authority and responsibility of the Senate to advise and consent to certain appointments: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) sections 3345, 3346, 3347, 3348, and 3349 of title 5, United States Code (relating to the filling of vacancies in certain offices), apply to all Executive agencies, including the Department of Justice.

(2) the general administrative authorizing statutes of Executive agencies, including sections 509 and 510 of title 28, United States Code, relating to the Department of Justice, do not supersede the specific vacancy provisions applicable to Executive agencies in title 5, United States Code; and

(3) the Attorney General of the United States should—

(A) take such necessary actions to ensure that the Department of Justice is in compliance with the statutory requirements of such sections; and

(B) inform other Executive agencies to comply with the vacancy provisions in title 5, United States Code.

Mr. THURMOND. Mr. President, today, I am submitting a sense-of-the Senate resolution regarding the Vacancies Act. I am pleased to do so on my behalf, and the distinguished chairman of the Senate Judiciary Committee, and other members of the Judiciary Committee. Our purpose is to clarify for the Attorney General that the Vacancies Act applies to all executive departments and agencies, including the Department of Justice.

The Vacancies Act provides that, except for recess periods, when an official serving in an advise and consent position in an executive agency leaves, the President may appoint certain individuals to serve in that position in an acting capacity for no more than 120 days before the nomination of a permanent replacement is forwarded for Senate confirmation. The Vacancies Act, which is codified in sections 3345 through 3349 of title 5 of the United States Code, has existed in some form since at least 1868.

This act is central to the advise and consent role of the Senate. By limiting the time that the President may temporarily fill a vacant advise and consent position, the act strongly encourages the President to quickly nominate a permanent replacement.

I have become increasingly alarmed at the Clinton administration's failure to nominate officials to fill the vacancies that have occurred in executive branch positions, and particularly in the Department of Justice. When we held a Justice Department oversight hearing in the Judiciary Committee at the end of April, vacancies existed for the Associate Attorney General, Solicitor General, Assistant Attorney General for Civil Rights, Assistant Attorney General for the Criminal Division, and Assistant Attorney General for the Office of Legal Counsel.

I asked Attorney General Reno at the oversight hearing whether she was concerned that a failure to nominate individuals for these positions within the 120-day deadline would violate the Vacancies Act. She responded in writing that the Justice Department was not bound by the Vacancies Act. The letter indicated that she could fill these vacancies pursuant to the Department's general administrative authorizing statutes without regard to the Vacancies Act.

In my opinion, the Attorney General is simply wrong. Her interpretation of the vacancies law in this area is nothing more than an attempt to get around the law.

First, the plain language of the Vacancies Act since it was amended in 1988 states that it applies to all executive departments and agencies. By law, the Department of Justice is an executive department, so Justice obviously is included. In fact, the original sponsor of the act, Representative Trumbull, stated on the Senate floor in 1868 that the act applied to, quote, ''any of the Departments.''

Also, the Congress flatly rejected the Attorney General's interpretation when it amended the Vacancies Act in 1988. As explained in the report of the Committee on Governmental Affairs, Congress made a choice in 1988 of whether to repeal or revive the Vacancies Act, and it chose the latter. The report stated that it was time ''to revitalize'' the Vacancies Act and ''make it relevant to the modern Presidential appointments process.'' One method of accomplishing this was to assist the President by expanding the number of days he had to submit a nominee from 30 to 120 days after the vacancy was created. That way, the President would have more time to submit a qualified replacement.

The committee report expressly rejected the Attorney General's flawed interpretation. It stated that the Vacancies Act was the exclusive authority for these appointments, and noted that the authorizing statutes of an executive department or agency do not provide an alternative means to fill vacancies. The amendment was made at the recommendation of the Comptroller General, who has battled with the Attorney General for many years over this flawed interpretation of vacancies law.

Mr. President, this is a matter of great constitutional significance. If the view of the Attorney General were correct, the President could routinely ignore the advise and consent role of the Senate. In the Justice Department, the President would never be obligated to nominate any official below the Attorney General for Senate confirmation after his first appointee left, as long as the President was content for the person to serve in an acting capacity.

In fact, based on the Attorney General's reasoning, the President apparently would not be bound by the Vacancies Act for officials in any department. Every Federal department from Agriculture to Veterans Affairs has authorizing statutes similar to Justice. Many Federal agencies do, too. Therefore, based on the Attorney General's reasoning, these departments and agencies can all claim to be exempt from the Vacancies Act. In fact, when faced with the Vacancies Act, many make the Attorney General's argument, and claim they aren't bound by it either. Obviously, the Congress would never have intended for its confirmation power to be circumvented in this manner.

The Framers of the Constitution surely would not be pleased. The advise and consent role of the Senate is one of the fundamental checks and balances included within our great system of Government. Under the appointments clause of article II, section 2, of the Constitution, the President has the exclusive power to nominate principal officers of the United States, but the